*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.9983 of 2004

%18-11-2004

Smt B.Pushpamma and others

..PETITIONERS

Vs.

$ The Joint Collector, Ranga Reddy District at Hyderabad.

..RESPONDENTS

! COUNSEL FOR PETITIONERS: Ms.A.Jayanthi
^ COUNSEL FOR RESPONDENTS 1 TO 3: G.P. FOR Revenue (General)
COUNSEL FOR RESPONDENT No.4 : Sri V.V.N.Narayana Rao

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. 1999 (5) ALT 480 (paras 9 and 10) = 2000 ALT (Rev.) 38

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 9983 of 2004

Between:

1 Smt.B.Pushpamma, W/o Late Sri Anjaiah, H.No.13-6-462/A/21,

Bhagawan Das Bagh, Tallagadda, Hyderabad – 500 067.
2 B.Narasimha Goud, S/o. Late Sri Anjaiah, H.No.13-6-462/A/21,

Bhagawan Das Bagh, Tallagadda, Hyderabad -500 067.
3 Smt. M.Vasundhara, W/o. Sri M.Sravan Kumar Goud,
H.No.13-6-462/A/21, Bhagawan Das Bagh, Tallagadda, Hyderabad -

500 067.

4 Smt. P.Rajitha, W/o. Sri P.Rajendra Kumar, H.No.13-6-462/A/21,

Bhagawan Das Bagh, Tallagadda, Hyderabad -500 067.

..... PETITIONERS

AND

1 The Joint Collector, Ranga Reddy District at Hyderabad.
2 The Revenue Divisional Officer, Chevella.
3 The Mandal Revenue Officer, Shahbad Mandal, Ranga Reddy District.
4 Goundla Buthcaiah, S/o. Late Sri Balaiah, R/o. Regadi Doswada

Village, Shabad Mandal, Ranga ReddyDistrict.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of writ of certiorari calling for the records from the first respondent in his proceedings in Case No.D5/7505/96 and further quash the impugned order in the said proceedings dated 5.6.2004 being illegal, contrary to law and vitiated by the material irregularities and jurisdictional errors.

Counsel for the Petitioners: Ms.A.JAYANTHI

Counsel for Respondents 1 to 3: GP FOR REVENUE

Counsel for Respondent No.4 : Mr.V.V.N.NARAYANA RAO

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.9983 OF 2004

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ORDER:

The first petitioner is the wife and petitioners 2 to 4 are children of one Anjaiah, who is none other than the brother of the fourth respondent. It is the case of the petitioner that the property in Survey Nos.304,362 and 392 admeasuring Ac.26.27 guntas in Regadi Doswada village in Shahbad Mandal of Ranga Reddy District and other lands originally belonged to one Balaiah, the father of Anjaiah and fourth respondent. After his death, according to the petitioners, the property was partitioned by an unregistered partition dated 09.05.1963 and the land (hereafter called, subject land) fell to the share of Anjaiah, that Anjaiah made an application to the third respondent for regularisation of the partition deed under Section 5-A of A.P.Rights in

Land and Pattadar Pass Books Act, 1971 (the Act, for brevity) that by order dated 08.02.1996, Mandal Revenue Officer issued proceedings regularizing the unregistered partition deed, and aggrieved by the same, the fourth respondent unsuccessfully filed appeal before the second respondent, which was dismissed on 21.09.1996, whereafter at the behest of the fourth respondent while exercising power of revision under Section 9 of the Act, the first respondent set aside the orders of the Mandal Revenue Officer and Revenue Divisional Officer relegating the parties to civil Court, aggrieved by the said order, the present writ petition is filed. Be it noted, when the matter was pending before the Mandal Revenue Officer, Anjaiah died and the petitioners herein pursued the matter as his legal representatives.

This Court while admitting the writ petition on 22.06.2004 suspended the impugned order of the first respondent. Thereafter the fourth respondent filed an application being W.P.M.P.No.20260 of 2004 praying this Court to expedite hearing of the writ petition. Having regard to the fact that the fourth respondent is 86 yeas of age, this Court directed the matter to be posted for final hearing on 25.10.2004 and ultimately the matter came up for hearing today.

Learned counsel for the petitioners, Ms.A.Jayanthi, submits that the impugned order of the Joint Collector is vitiated by error apparent on the face of record. In substantiation of the said submission, she contends that after partition, both the brothers filed declarations before the land reforms tribunal in C.C.No.1087/Ch/75, and C.C.No.2438/Ch/75 showing the entire subject land, and the land reforms tribunal after conducting enquiry rejected the claim of the fourth respondent and accepted the claim of the Anjaiah, and that thereafter he had filed an application before the third respondent. She would urge that the application was contested by the fourth respondent, and after considering the evidence, the third respondent ordered mutation in favour of Anjaiah to the extent of his share and the order does not suffer from any infirmity. She also would contend that when the third respondent has acted on the partition deed and ordered regularisation under Section 5-A of the Act, it was improper for the Joint Collector to come to a conclusion that there is a dispute regarding the title to the property.

Learned Assistant Government Pleader for Revenue (General) and the learned counsel for the fourth respondent, Sri V.V.N.Narayana Rao opposed the writ petition. They would contend that the order of the Mandal Revenue Officer as well as Revenue Divisional Officer have merged in the order of the first respondent and therefore it is improper for the petitioner to rely on the two orders, which are set aside by the first respondent. They also submit that as there is a serious dispute with regard to the absolute right to the property between the petitioners on one hand and the fourth respondent on the other hand claiming exclusive rights, the Joint Collector correctly decided that the matter has to be adjudicated before the civil Court and not by Mandal Revenue Officer or any authority under the provisions of the Act. Apart from these grounds, the learned counsel for the fourth respondent vehemently contends that late Anjaiah wrongly approached the Mandal Revenue Officer under Section 5-A of the Act and that when a person alleges the division of property already entered in the record of rights, an application for amendment of record of rights has to be filed under Section 4 of the Act, when the Mandal Revenue Officer

after following procedure under Section 5 of the Act and issuing notice to the persons who are interested or effected by such amendment may pass orders amending the record of rights. An unregistered partition deed cannot be regularised under Section 5-A of the Act.

The first respondent gave the following reasons in setting aside the orders of the Mandal Revenue Officer as well as Revenue Divisional Officer. The land originally belonged to Kalal Papaiah, whose name has been recorded in the Khasra Pahanis for the year 1954-1955. He gifted the property to the fourth respondent, who is nephew of Papaiah. In Khasra Pahanis 1954-1955 as well as Sesala Pahanis from 1955-1956 to 1957-1958, the name of the fourth respondent was entered as pattadar and possessor and that only during the period 1974-1975 to 1978-1979, the name of Anjaiah was shown along with the fourth respondent. Mandal Revenue Officer has failed to notice that the signatures of the parties on the partition deed were obtained subsequently and there is interpolation in the recital portion. There is no description of the lands by giving survey numbers. Though Anjaiah filed declaration before land reforms tribunal, the orders of the land reforms tribunal would not in any manner influence the proceedings under the Act and that when there is dispute regarding entitlement to the property of Kalal Papaiah, the same cannot be decided in a summary enquiry under the provisions of the Act. The first respondent relied on the judgment of this Court, in **K.Siddiah Naidu v District Collector**.

In this case, late Anjaiah approached the Mandal Revenue Officer under Section 5-A of the Act for regularisation of unregistered partition deed. In spite of objections by the fourth respondent that the property exclusively devolved on fourth respondent after death of Kalal Papaiah (the original pattadar), by reason of a gift deed executed in favour of the fourth respondent, the matter was decided by the Mandal Revenue Officer in favour of the legal heirs of Anjaiah. Section 5-A of the Act reads as under.

> **5-A. Regularisation of certain alienations or other transfers of lands:-** (1) Notwithstanding anything contained in this Act, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or effected otherwise than by registered document, the alienee or the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.
>
> (2) On receipt of such application, the Mandal Revenue Officer shall after making such enquiry as may be prescribed requite the alienee or the transferee to deposit in the office of the Mandal Revenue Officer an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908 as fixed by the Registering Officer on a reference made to him by the Mandal Revenue Officer on the basis of the value of the property arrived at in such manner as may be prescribed:
>
> Provided that the Mandal Revenue Officer shall not require the alienee or the transferee to deposit the amount under this sub-section unless he is satisfied

that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(3) Nothing contained in sub-section (1) and sub-section (2) shall be deemed to validate any alienation where such alienation is in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(4) The Mandal Revenue Officer on deposit of an amount specified in sub-section (2), shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of certificate and such certificate shall, notwithstanding anything in the Registration Act, 1908 be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him.

(5) The recording authority, shall on the production of the certificate issued under sub-section (2) make any entry in the pass book to the effect that the person whose name has been recorded as an occupant is the owner of the property.

As per sub-section (1) of Section 5-A of the Act, where a person is an occupant by virtue of alienation or transfer made or effected otherwise than by registered document, such alienee or transferee may apply to the Mandal Revenue Officer for certificate declaring that such alienation or transfer is valid. In the case of partition deed, there is no such alienation or transfer, but only adjustment of rights among joint owners and co-sharers with the property. Further under Section 4 of the Act, any person acquiring property, *inter alia,* by partition has to apply to the Mandal Revenue Officer seeking amendment of record of rights. For example, if the property is originally shown in the record of rights as belonging to the father, after death of the father, his sons have to apply under Sections 4 and 5 of the Act for amendment of the record of rights, if there is a partition between them. Therefore, the orders of the Mandal Revenue Officer as well as the Revenue Divisional Officer suffer from misdirection in law.

A reference may also be made to Section 8(2) of the Act, which stipulates that if any person is aggrieved as to any right by an entry made in any record of rights, he may institute a suit against any person denying or interested to deny his title for declaration under Chapter VI of the Specific Relief Act, 1963. It is not denied that in the proceedings before the Mandal Revenue Officer initiated by late Anjaiah, the fourth respondent raised dispute claiming exclusive right to the property in question. In such an event, Section 8(2) of the Act would be attracted and as correctly observed by the Joint Collector, such questions cannot be decided in a summary enquiry under the provisions of the Act.

In **Siddiah Naidu's case**, the petitioner approached the Mandal Revenue Officer under Section 5-A of the Act for regularisation of an unregistered sale agreement. The Mandal Revenue Officer informed the petitioner therein that the request for issue of pattadar passbooks will be considered only after settlement of titles in competent court of jurisdiction. The same was impugned in the writ petition as being violative of Section 8 of the Act. This Court found that there was a serious dispute regarding agreement of sale. Therefore, while dismissing the writ petition, this Court made the following observations, which are relevant and read as under.

> It is to be noted that the petitioner has been seeking a relief with regard to change of entries in the revenue record only on the basis of the agreement of sale and that itself indicates that there is any amount of dispute about the possession and title of the petitioner particularly in view of the matter being seriously disputed by the fifth respondent. In other words maintaining this writ petition means indirectly seeking the verdict on the disputed question of title and possession, which has to be dissuaded by all means.

> Therefore this question of title and possession is purely in the nature of question of fact which cannot be decided by an authority like the third respondent and until and unless the title of such a disputed property is decided one way or the other, necessary changes of entries in the revenue record cannot be effected by the revenue officials under the Act. Therefore, I find no illegality or irregularity in the order passed by the third respondent. Hence, it is expedient for the petitioner to approach competent Civil Court in order to get the title dispute settled in his favour and then only approach the authorities under the Act for appropriate relief.

For the above reasons, it must be held that the writ petition is devoid of merits and is accordingly dismissed with costs.

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(V.V.S.RAO,J)

18.11.2004.

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Note : LR Copy be marked

(By order)

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To

(One fair copy to the Hon'ble Mr. Justice V.V.S.Rao, for His Lordships kind perusal)

1 The Joint Collector, Ranga Reddy District at Hyderabad.
2 The Revenue Divisional Officer, Chevella.
3 The Mandal Revenue Officer, Shahbad Mandal, Ranga Reddy District.

4 2 CCs to the G.P. for Revenue, High Court Buildings, Hyderabad

(OUT).

5 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

6 The Secretary, A.P.Advocates Association Library, High Court

Buildings, Hyderabad.

7 8 LR Copies.

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